

(2013) 08 BOM CK 0078
In the Bombay High Court
Case No : Second Appeal No. 708 of 2010

Vijaykumar and Others

APPELLANT

Vs

Manohar, Assistant Charity Commissioner, Joint Charity
Commissioner and Charity Commissioner

RESPONDENT

Date of Decision : 19-08-2013

Acts Referred:

Bombay Public Trusts Act, 1950 — Section 41D(4), 72(1)
Evidence Act, 1872 — Section 115

Citation : (2013) 6 ABR 1121 : (2014) 1 ALLMR 516 : (2014) 1 BomCR 476 :
(2013) 6 MhLj 785

Hon'ble Judges : A.B. Chaudhari, J

Bench : Single Bench

Advocate : V.J. Dixit, instructed by Mr. S.V. Natu, for the Appellant; S.B. Talekar,
Advocate for the Respondent No. 1, for the Respondent

Judgement

A.B. Chaudhari, J.

FACTS:

1. This appeal relates to the disputes amongst the trustees/members of an educational trust registered under the provisions of the Bombay Public Trust Act (hereinafter referred as to the "B.P.T. Act" for the sake of brevity). When the dispute reached the Court of Additional District Judge, Nilanga Camp at Latur, the learned Additional District Judge, Nilanga on 03.05.2002 in Misc. Application No. 29/1999 and Misc. Application No. 52/1999 made the following operative order.

ORDER

i) The application bearing M.A. No. 29/99 and cross objection therein are hereby dismissed.

ii) The application bearing M.A. No. 52/99 stands allowed and the impugned order of removal of the applicants therein from trusteeship of the trust Mahatma Basweshwar Shikshan Sanstha, Latur PTR No. F-52 (Latur) is hereby set-aside.

The direction to Assistant Charity Commissioner, Latur and stipulation imposed on the trustees under impugned order shall stand vacated.

iii) The applicants in M.A. No. 52/99 to hold the reins of the administration of the trust and to take steps for appointment of other trustees according to the provisions of the instrument of the trust or in accordance with the provisions of Bombay Public Trust Act, 1950.

iv) No order as to costs.

Under operative order Clause (iii) he directed that the applicants in M.A. No. 52/1999 to hold the reins of administration of trust and to take steps for appointment of other trustees. Pursuant to the said direction in 2002 Manohar Keshavrao Patil/respondent No. 1 herein was appointed as trustee by the said body of "fit persons" which came into existence pursuant to the said judgment and order dated 03.05.2002. However, on 24.10.2006, the respondent No. 1/Manohar Patil resigned from the post of trustee as well as member of the trust by filing an application in writing and that application was considered by the said body of "fit persons" which accepted his resignation by resolution passed by committee on 31.10.2006 and a Change Report about it was filed vide Change Report Enquiry No. 689 of 2006 before the Assistant Charity Commissioner, Osmanabad. The Assistant Charity Commissioner conducted the proceedings of enquiry in absence of the respondent No. 1/Manohar Patil, because he and his advocate were absent and did not adduce any evidence to prove his case after filing his reply Exhibit 13 dated 16.03.2007. Consequently, the Assistant Charity Commissioner, Osmanabad accepted the said change report and directed necessary amendment to Schedule-I by his order dated 29.01.2009. The respondent No. 1 challenged the said order in Revision Application No. 31/2009 before the Joint Charity Commissioner Latur who on 11.03.2010 allowed the said revision and held that under Clause 29 of the Constitution of the trust, governing council has power to suspend or cancel the membership of person in case of misconduct committed by such person and, therefore, the governing council is empowered to accept the resignation, but he stated that the body of "fit persons" not being elected trustees of governing council were not competent to accept the resignation of Manohar Patil as trustee and member of the trust, because body of fit persons was not "de-jure" trustees, but was "de-facto" trustees. Thereafter, the matter went before the District Judge-1, Latur at the instance of present appellants, who filed Application U/Sec. 72-(1) of the B.P.T. Act before the District Court, who concurring with the findings recorded by the Joint Charity Commissioner dismissed the application. Hence this second appeal.

SUBMISSIONS:

2. The learned senior counsel for appellants Shri V.J. Dixit, instructed by Shri S.V. Natu made the following submissions:

i) The direction No. 3 in the operative part of the judgment dated 03.05.2002 by the District Court clearly shows that the body of fit persons was required to take

reins of administration of the trust in entirety and there is no prohibition or limitations put on said body of fit persons on working of the administration of the trust or for taking policy decision.

ii) The subject namely acceptance of resignation of a trustee and a member obviously falls within the meaning of the term administration of the trust and, therefore, there is no reason why such body of fit persons duly accepted by the other side should be held to be not competent to accept a resignation of a trustee and member which act admittedly is voluntary.

iii) It is an admitted fact that, the respondent No. 1/Shri Manohar Patil was appointed by the said body of fit persons after it was constituted by the order dated 03.05.2002 by the District Court and it is the same body of fit persons which has accepted the resignation of the respondent No. 1.

iv) The respondent No. 1 never disputed the resignation in writing tendered by him as trustee as well as the member of the trust and, therefore, that being voluntary act on his part coupled with the fact that, he did not contest the change report before the Assistant Charity Commissioner in the matter is estopped by his conduct to put challenge to the same. Hence he prayed for reversing the impugned judgments and orders.

3. Per contra, Mr. S.B. Talekar, the learned counsel for the respondent No. 1 vehemently opposed the second appeal and argued that the body of fit persons constituted by the District Court must be held to be "de-facto" trustees and not "de-jure" trustees as has been held by two courts below and there is no reason why the same should be interfered with by this Court.

4. Mr. Talekar, fairly stated that, the respondent No. 1 did not dispute the fact of resignation being tendered in writing for the post of trustee and member of the trust and that he did not appear before the Assistant Charity Commissioner to contest the change report and that the resignation tendered by the respondent No. 1 was voluntary. However, Mr. Talekar, strongly stressed the point that the body of fit persons was not competent to accept the resignation as trustee or as a member of the trust, because it has no status of governing body or managing committee as understood in the Constitution of the trust to proceed to take action or accept resignation. According to him, the body of fit persons is merely a body to look after the day today administration and function, but cannot take a major decision of accepting resignation of a trustee or a member or both, considering the nature of its limited authority. The body of fit persons is nothing but an adhoc body set up by way of stop gap arrangement and nothing more. He then argued that, the respondent No. 1/Manohar Patil is a life member of the trust and he cannot be removed by resignation that too by an adhoc body, which is nothing more than a de-facto board of trustees and not a de-jure. Mr. Talekar took me through the Constitution of the trust and various clauses therein about the powers and functions of governing body and also about the removal of members. He submitted that, there is no power or function entrusted with the

ad hoc body of fit persons to accept the resignation of trustee or a member. He relied on the following decisions.

I) Ajit Shankarrao Deshmukh and Others Vs. Joint Charity Commissioner and Others, .

II) Hislop Education Society Vs. Presiding Officer, University College Tribunal, Dr. Ambedkar University Law College and Others, .

III) Avinash Ganpatrao Shegaonkar and Others Vs. Shri Jayawant @ Babasaheb Uttarwar, The Chairman and Others .

IV) Zitru Lahanuji Lonare Vs. Rajesh Trimbakrao Deshmukh and Others, .

and argued that, this Court has clarified the nature of appointment of body of fit persons and its functions to mean that the same is stop gap and de-facto arrangement and nothing more. He therefore, prayed for dismissal of second appeal.

CONSIDERATIONS:

5. I have heard the learned counsel for rival parties at length. I have carefully perused the record, so also the decisions cited before me. The following substantial questions of law arise for my consideration.

6. It is not in dispute that the body of fit persons was constituted by order dated 03.05.2002 by the District Court in accordance with Sec. 41D(4) of the B.P.T. Act. It is also not in dispute that the said body of fit persons after its constitution appointed respondent No. 1/Manohar Patil as a trustee, since he was already member of the Trust. It is further not in dispute that, on 24.10.2006 he voluntarily tendered a resignation from the post of trustee as well as member of the trust by filing an application in writing under his signature which was considered by the body of fit persons and by passing resolution dated 31.10.2006, the same was accepted in toto. Thereafter Change Report No. 689/2006 was filed with the Assistant Charity Commissioner, Osmanabad for reporting the said change. It is further not in dispute that the respondent No. 1/ Manohar Patil except filing his reply Exhibit 13 did not at all contest the said change report on any ground whatsoever and thus change report was accepted. The term resignation is explained as under:

Resignation", in the dictionary sense, means the spontaneous relinquishment of one's own right. This is conveyed by the maxim: "Resignatio est juris proprii spontanea refutatio". In relation to an office, it connotes the act of giving up or relinquishing the office. To "relinquish an office" means to "cease to hold" the office or to "loose hold of" the office, and to "loose hold of office", implies to "detach", "unfasten", "undo or untie the binding knot or link" which holds one to the office and the obligations and privileges that go with it. In the general juristic sense also, the meaning of "resigning office" is not different. There also, as a rule, both, the intention to give up or relinquish the office and the concomitant

act of its relinquishment, are necessary to constitute a complete and operative resignation, although the act of relinquishment may take different forms or assume a unilateral or bilateral character, depending on the nature of the office and the conditions governing it. Thus, resigning office necessarily involves relinquishment of the office, which implies cessation or termination of, or cutting as under from the office. Indeed, the completion of the resignation and the vacation of the office, are the casual and effectual aspects of one and the same event. From the above dissertation, it emerges that a complete and effective act of resigning office is, one which serves the link of the resign or with his office and terminates its tenure.

7. Considering the above admitted facts and the order dated 03.05.2002 supra and in particular operative order part (iii), which is again quoted below,

iii) The applicants in M.A. No. 52/99 to hold the reins of the administration of the trust and to take steps for appointment of other trustees according to the provisions of the instrument of the trust or in accordance with the provisions of Bombay Public Trust Act, 1950.

to my mind shows that the body of fit persons appointed must be held to be "de-jure" trustees and not "de-facto" trustees.

8. Black's Law Dictionary Eighth Edition gives the meaning of word "de-jure" thus:

de jure (di juur-ee also dee or day), adj. [Law Latin "as a matter of law"] Existing by right or according to law. Cf. DE FACTO; DE GRATIA.

9. Section 41D(4) of the B.P.T. Act reads thus:

THE BOMBAY PUBLIC TRUST ACT, 1950

41 D. Suspension, removal and dismissal of trustees.

(1).....

(2).....

(3).....

(4) Where the Charity Commissioner has made an order suspending, removing or dismissing any trustee and such trustee is the sole trustee, or where there are more than one trustee and the remaining trustees, according to the instrument of trust, cannot function or administer the trust without the vacancy being filled, then in that case the Charity Commissioner shall appoint a fit person to discharge the duties and perform the functions of the trust, and such person shall hold office only until a trustee is duly appointed according to the provisions of the instrument of trust.

10. It is thus clear that, it is by virtue of the provisions of law U/Sec. 41D(4) of the B.P.T. Act that the body of fit persons is appointed. That being so, I have no

hesitation in answering the substantial question No. 1 in affirmative.

11. In view of the answer given by me to question No. 1 and in view of the fact that the said body of fit persons was managing the affairs of the trust under the order of District Court in exercise of power under statutory law without any restriction on the body of fit persons in the matter of exercise of power in administration of the trust, there is no reason why the body of fit persons should not be termed as a competent body to accept the resignation voluntarily tendered by the respondent No. 1/Manohar Patil. Hence, I answer substantial question No. 2 in affirmative.

12. Section 115 of the Indian Evidence Act reads thus:

THE INDIAN EVIDENCE ACT 1872

1.....

115. Estoppel.--When one person has, by his declaration, act or omission, intentionally caused or permitted" another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing.

As stated earlier, the respondent No. 1 voluntarily tendered his resignation as trustee and member of the trust to the body of fit persons, who had appointed him as a trustee, though originally he was member of the trust. However, since he himself wanted to tender resignation of both as trustee and member and tendered accordingly and does not raise any dispute even now about his act of resignation as trustee as well as member, is clearly estopped by his declaration from putting to challenge the acceptance of change report of resignation on the principles of estoppel by conduct. He is also estopped on the said principle to challenge the authority of the body of fit persons to accept his resignation as trustee as well as member. The statement made by Mr. Talekar, the learned counsel for the respondent No. 1 that, the body of fit persons should be held as "de-facto" trustees as held by the two courts below, does not appeal to me for the above reasons. His second submission that, as member of the trust at least the acceptance was illegal also does not impress me, since the body of fit persons was authorized to administer the trust and its affairs and also to take steps for appointment of other trustees which would also include acceptance of resignation as a trustee or member. The body of fit persons was incharge of the trust in place of the members of the trust which became functional as constituted by the Rules and Regulations of the trust. Thus, I answer the last question in the affirmative.

13. The upshot of the above discussion is, instant second appeal must succeed. Hence I make the following order.

ORDER

A. Second Appeal No. 708 of 2010 is allowed, with no order as to costs.

B. The impugned judgment and order dated 24.08.2010 passed by the District Judge-1, Latur in Misc. C.A. No. 69/2010 and the judgment and order dated 11.03.2010 passed by the Joint Charity Commissioner, Latur in Revision No. 31/2009 are set aside.

C. The judgment and order dated 29.01.2009 passed by the Assistant Charity Commissioner, Osmanabad in Change Report No. 689 of 2006 is restored.

After pronouncement of the judgment, the learned counsel for the respondent No. 1 prays for stay of this judgment, which prayer is opposed by the learned counsel for appellants. There shall be stay to this judgment for a period of six (6) weeks from today.